



Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Deployment of Wireline Services Offering  
Advanced Telecommunications Capability

and

Implementation of the Local Competition  
Provisions of the  
Telecommunications Act of 1996

CC Docket No. 98-147

CC Docket No. 96-98

**REPLY COMMENTS OF VERIZON**

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March 13, 2001

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**Introduction and Summary**

The Commission's *Sixth Further Notice* comes at a crucial time in the Commission's development of rules for a competitive broadband marketplace and in the deployment of broadband services. If the Commission were to make the wrong decisions here, and add still further unbundling and other regulatory burdens to local exchange carriers' broadband services as some parties urge, it would further undermine the economic incentive for these carriers to make the extensive investments necessary to upgrade their networks to compete with the cable incumbents and other emerging broadband competitors. A wrong decision will also send the wrong signal to competitors, as CLECs will once again feel that they can sit back and wait for the ILECs to take all the risks and bankroll the CLECs' business plans.

The right decision by the Commission, however, would help to preserve the incentives provided by the market to develop and deploy competitive broadband services to the benefit of consumers. The incumbents will invest in new technology if they are not required to give it away

to their competitors. As Verizon proposed in its comments and elsewhere, incumbents also can make broadband services available to CLECs as a wholesale service offering. These new networks would provide an alternative to CLECs which, for whatever reasons, decide not to immediately deploy their own facilities as the current rules adequately allow. And most important, these new networks would provide consumers a new competitive alternative to cable broadband services.

Unfortunately, many of the commentators ignore these important issues. Rather than limiting the regulations that already apply to LEC broadband services, they urge the Commission to expand the unbundling and other requirements that apply to these services further still and to require the ILECs to give them more capabilities at low TELRIC prices, including combinations that do not exist in Verizon's network today. Catena Networks has it right when it warns the Commission, "Imposing excessive burdens on the incumbent carriers or precluding them from fully recovering their costs will not foster competition."<sup>1</sup> Indeed, imposing further unbundling requirements would put all the costs and risks of deploying broadband services on the ILECs while ensuring that others would reap any reward for that investment. The Act does not require this, and sound economic policy requires that the Commission reject these requests.

The Commission needs to reevaluate the application of the section 251 regime in the broadband arena. That statutory scheme was designed to inject additional competition into the market for traditional telephony, not into new markets that never were previously served by telephone carriers. It was designed to encourage competition with the dominant ILEC, not to regulate the ILECs' entry into a market dominated by others. It provides a bridge to full facilities-based competition, which is unnecessary in the broadband context where the ILEC is

the insurgent competitor entering in competition with the cable incumbents and other emerging competitors such as fixed wireless and satellite providers.

Instead of extending the section 251(c) approach further into the market for advanced services, the Commission should examine its existing rules for places where it can relieve ILEC broadband services of the burdens of the section 251(c) regime. In particular in this context, it should eliminate completely the requirement that an ILEC provide packet switching capability on an unbundled basis.

This proceeding is not about competitive equality. It is the latest step in the CLECs' efforts to impose added costs and risks on ILECs while ensuring that they cannot garner any benefit from their risky investment. First it was loops, then subloops, then shared loops, then split loops and now shish-kabob loops with CLEC line cards inserted into ILEC facilities. The CLECs claim that the ILECs are gaining an advantage — that they are deploying a new network architecture that makes it harder for them to compete.<sup>2</sup> In fact, regulatory rules are discouraging the deployment of new networks. Instead, the Commission should encourage these upgrades, not adopt rules to make them uneconomical. Covad et al. are candid about what they want the Commission to do. They do not want a fair start in the competitive race; they want, first, the ILECs to underwrite their entry and, then, a head start, as they ask the Commission to prohibit an ILEC from offering broadband services to customers through remote terminals “until *after* the competitive LEC community is able to do the same.”<sup>3</sup> The Commission should not endorse such an anti-competitive perversion of the 1996 Act.

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<sup>1</sup> Catena at i.

<sup>2</sup> Covad et al. at i, 8.

<sup>3</sup> Covad et al. at 20 (emphasis in original).

AT&T would have the Commission believe that the ILECs are to blame for the fact that “the data CLEC industry has virtually collapsed.”<sup>4</sup> Less biased observers have a very different view. As one analyst said last week,

“Buoyed by the giddy Internet craze in 1999 and early 2000, investment money flowed in — particularly to competitive LECs — with little examination of the underlying business plans. ‘Any moron who could put pen to paper could get a million dollars,’ Shapiro says sourly.

“With investors now wising up, these poorly planned businesses are not getting funding to continue and are dying out. But there still are a number of these ailing companies that haven’t yet breathed their last. ‘It’s a natural cycle of overcapitalization followed by shakeout,’ Shapiro says. ‘Once that is done you will have some stronger companies that will survive. But it is a long way from being finished.’”<sup>5</sup>

The Commission should not let interested carriers stampede it into adopting rules that help their businesses but make no economic or public policy sense.

1. Existing Rules Do Not Require ILECs To Provide Unbundled Loops That Include DSLAMs at the Remote Terminal.

Some of the commentators claim that the Commission’s existing regulations already require incumbent LECs to provide an unbundled network element that includes a copper loop, DSLAM capability at a remote terminal and fiber distribution plant.<sup>6</sup> This is not the case.

Section 51.319(a)(1) defines the “local loop network element” as “a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises.” This same section explicitly excludes

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<sup>4</sup> AT&T at 4.

<sup>5</sup> K. Brown, “Surviving the Fall,” *Broadband Week*, March 5, 2001, [http://www.broadbandweek.com/news/010305/010305\\_news\\_fall.htm](http://www.broadbandweek.com/news/010305/010305_news_fall.htm).

<sup>6</sup> E.g., AT&T at ii, 6; Covad et al. at ii, 7, 19, 22; Sprint at 8.

DSLAM hardware from the features, functions and capabilities included in the definition of the “local loop.” This rule is sufficient to dispose of these commentators’ claim.

The rules not only explicitly exclude DSLAMs from the definition of the “local loop,” but they also equally clearly include DSLAMs in the definition of a different network element, “packet switching.”<sup>7</sup> As the Commission held, “we find that the DSLAM is a component of the packet switch network element.”<sup>8</sup>

When writing these definitions, the Commission specifically considered and rejected requests that it not include DSLAMs as part of the packet switching UNE — “We decline to adopt proposed definitions of packet switching that exclude DSLAMs from the packet switching functionality.”<sup>9</sup> Nothing in these latest comments provides any basis for the Commission to change its mind now.<sup>10</sup>

AT&T says that “there can be no dispute that DSLAMs provide only transmission, not packet switching, functionality.”<sup>11</sup> This is not only flatly inconsistent with the existing rules, it is also factually incorrect. DSLAMs plainly do more than simply transmit telecommunications. As

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<sup>7</sup> 47 C.F.R. § 51.319(c)(4)(i). See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3707 (1999) (“*UNE Remand Order*”) (“Packet switching is defined as the function of routing individual data message units based on address or other routing information contained in the data units, including the necessary electronics (e.g., DSLAMs”).

<sup>8</sup> *UNE Remand Order* ¶ 175. Similarly, “We find that a component of the packet switching functionality, and included in our definition of packet switching is the Digital Subscriber Line Access Multiplexer (DSLAM).” ¶ 303.

<sup>9</sup> *UNE Remand Order* ¶ 304.

<sup>10</sup> Likewise, the OCD is part of packet switching, not part of the loop. *UNE Remand Order* ¶ 304.

<sup>11</sup> AT&T at 12.



the Commission found, “packetizing is an integral function of the DSLAM.”<sup>12</sup> Moreover, AT&T ignores other functionality as well. For example, the Alcatel remote terminal DSLAM includes ATM Bank Control Units (ABCUs) which contain the ATM switching fabric to direct virtual channels transported over a common OC-3c facility to the appropriate line card channel units. The ABCU reads the ATM cell header information that contains “routing” information and directs the ATM cells to the appropriate customer’s line card. This capability is obviously outside the definition of transmission.

AT&T not only wants to add to the definition of the “local loop” by inserting a DSLAM in the middle, it also wants to add additional equipment at the end and asks the Commission “to clarify” that the loop includes optical concentration devices (OCDs).<sup>13</sup> The OCD is an ATM switching device that performs routing and aggregation of packet data. The Commission has found that the OCD “should be classified as Advanced Services Equipment” as a packet switch.<sup>14</sup> In fact, in the same order, the Commission rejected “AT&T’s argument that the OCD should not be classified as Advanced Services Equipment.”<sup>15</sup>

AT&T attempts to analogize OCD to the central office terminals (COTs) that are used for circuit switched traffic, but this attempt fails because OCDs and COTs have different features and functions and are not comparable. The COT is the device in the central office that terminates the feeder transport from the remote terminal and either converts narrowband traffic back to

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<sup>12</sup> *UNE Remand Order* ¶ 304.

<sup>13</sup> AT&T 13-14.

<sup>14</sup> *Ameritech Corp.*, 15 FCC Rcd 17521 ¶ 18 (2000) (“*Project Pronto Order*”).

<sup>15</sup> *Project Pronto Order* ¶ 19.

analog or directs integrated voice traffic to the digital switch.<sup>16</sup> Thus, the COT takes traffic already allocated to specific “dedicated” time slots and simply directs it to the appropriate voice switch line unit or digital device in the central office. The COT does not aggregate or switch traffic between switch interface groups.

Unlike a COT, an OCD is a packet switch. The OCD must read ATM header information, route individual packets to the appropriate outgoing port and aggregate them into a high-speed ATM carrier interface. In addition, the OCD must be capable of routing ATM traffic based on different ATM classes of services. Consequently, the OCD must have the sophistication to police incoming traffic and verify that it meets the traffic contract requirements on a virtual circuit-by-virtual circuit basis. It clearly performs a different function than a COT, and several commentors confirm the fact that OCDs perform packet switching functions.<sup>17</sup>

Like these other commentors, Mpower also wants ILECs to provide it with packet switching capabilities. It, at least, recognizes that the Commission’s rules provide that an ILEC must do so only if four conditions are met.<sup>18</sup> Its “solution” to this little problem posed by the rules is simply to assume that “[w]hen an ILEC deploys next generation loops all four conditions . . . will generally be present.”<sup>19</sup> The presence of digital loop carrier is just the first of the four conditions, however. Even where it exists, the rules require CLECs to show that the three other conditions also exist before an ILEC is required to offer unbundled packet switching, cutting off the short-cut proposed by Mpower.

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<sup>16</sup> The COT may also direct non-switched traffic (commonly called special services) to interoffice transport or other digital network elements in the central office.

<sup>17</sup> Mpower at 14; Sprint at 8 n.15, 11.

<sup>18</sup> 47 C.F.R. § 51.319(c)(5).

<sup>19</sup> Mpower at 14.

**2. The Commission Should Not Redefine the Local Loop To Require ILECs To Provide a New Unbundled Element.**

Because the unbundled element that these commentors request is not provided for in the Commission's regulations, it would require a rule change — with the required analysis under section 251(d) — for the Commission to require such unbundling now. This new loop-plus-intermediate-DSLAM network element does not meet the standards of the Act.

The Commission must first determine whether failure to provide access to such network elements “would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”<sup>20</sup> Under the Commission's rules, this means that “lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer.”<sup>21</sup> The commentors have asserted that this is the case, but none has offered anything that approaches evidence, let alone proof, of that assertion.

AT&T, for example, says that it cannot realistically collocate its own DSLAM at the remote terminal and that this new UNE is, therefore, required —

“If the Commission were to deny competitive LECs access to the DSLAM functionality in the remote terminal, it would prevent them from being able to . . . transmit telecommunications signals between their customers' premise and the serving ILEC's central office . . . because . . . remote collocation (in any form) is either physically unavailable or cost-prohibitive.”<sup>22</sup>

Covad et al. make a similar claim:

“while regulations exist that extend competitive LEC collocation rights to the remote terminals of next-generation loop architecture, most of those options are not currently economically or technically feasible.”<sup>23</sup>

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<sup>20</sup> 47 U.S.C. § 251(d)(2)(B).

<sup>21</sup> 47 C.F.R. §51.317(b)(1).

<sup>22</sup> AT&T at 27.

<sup>23</sup> Covad et al. at 8. Similarly, “it is simply uneconomical for the CLEC to avail itself of remote terminal adjacent collocation.” Sprint at 6.

These assertions are flatly inconsistent with these commentors' own positions in the *UNE Remand* proceeding<sup>24</sup> where they advocated the rules they now say are inadequate.<sup>25</sup>

More important, these commentors ignore an important aspect of the impairment test. In applying that test, the Commission

"will consider the totality of the circumstances to determine whether an alternative to the incumbent LEC's network element is available in such a manner that a requesting carrier can realistically be expected to actually provide service using the alternative."<sup>26</sup>

Thus, the Commission must consider evidence that other providers are already providing the telecommunications services in question:

"[U]nder the Court's interpretation, the Act requires that the Commission, at a minimum, examine the extent to which elements are available from sources other than the incumbent.

"The availability of elements outside the incumbent's network could potentially turn on many factors, such as the existence of vendors and distribution channels, the presence of competing facilities-based LECs and the price of non-incumbent elements relative to the requesting competitor's ability to pay."<sup>27</sup>

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<sup>24</sup> AT&T, for example, argued that competitors should be allowed to "put their own equipment in the remote terminal." Comments of AT&T at 78, dated May 26, 1999. Covad claimed that "next generation RT/DLC systems can be designed or re-engineered to permit ILECs and CLECs to place DSLAMs of their choosing in a separate or adjacent RT or on top of the original RT." Covad Comments at 41, dated May 26, 1999.

<sup>25</sup> Verizon continues to believe that it was unnecessary to impose a collocation obligation at the remote terminal. However, if the Commission was right in that order, that collocation of DSLAMs was necessary to eliminate the CLECs' impairment (*UNE Remand Order* ¶ 313), then these CLECs cannot now claim that such collocation is not feasible and that they are still impaired even with the ability to collocate their DSLAMs.

<sup>26</sup> *UNE Remand Order* ¶ 62.

<sup>27</sup> Separate Statement of Michael K. Powell, *Second FNPRM*, 14 FCC Rcd 8694, 8720 (1999).

As Catena Networks correctly points out, there are “broadband services already being offered by cable companies, satellite carriers and terrestrial wireless operators.”<sup>28</sup> And the Commission has noted the existence of “multiple” carriers providing service through their own packet switches.<sup>29</sup> Because competitors have alternative transmission options, the Commission may not require ILECs to provide this new UNE.

But even if such a new network element met the impairment test — which it does not — that fact would not require that ILECs make it available. The rules continue, “If the Commission determines that lack of access to an element ‘impairs’ a requesting carrier’s ability to provide service, it *may* require the unbundling of that element.”<sup>30</sup> Section 51.317(b)(3) establishes other factors the Commission is to consider in making such a determination, including

“(i) Whether unbundling of a network element promotes the rapid introduction of competition;

“(ii) Whether unbundling of a network element promotes facilities-based competition, investment, and innovation; [and]

“(iii) Whether unbundling of a network element promotes reduced regulation. . . .”

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<sup>28</sup> Catena at 6.

<sup>29</sup> *UNE Remand Order* ¶ 306.

<sup>30</sup> 47 C.F.R. § 51.317(b)(1) (emphasis added).

The requested new network element fails each of these three tests.

Most important, such a new element would discourage “facilities-based competition, investment, and innovation.” If CLECs can get these capabilities from ILECs at TELRIC prices, they will have no reason to invest in their own facilities — why should they risk their money when they can risk the ILECs’ money instead.<sup>31</sup>

Moreover, as Catena Networks correctly observes, “incumbent carriers will have little or no incentive to make capital investments in DSL technologies if they are required to provide their competitors access to those capabilities at prices that are below cost.”<sup>32</sup> Verizon, for one, would be disinclined to deploy fiber from the central office to the remote terminal and to install DSLAM functionality in the remote terminal if it was going to have to provide those facilities to its competitors as part of a UNE at TELRIC-based prices. In fact, no rational carrier would spend money to deploy new capabilities if the Commission were going to require that they be unbundled and offered on those terms. TELRIC pricing has a chilling effect on network investment and on modernization of the loop, inhibits competitive network growth, and consequently is poor public policy. Only where a carrier is given an opportunity to recover its costs and earn a return commensurate with the risk of deploying this technology would the carrier invest the money in them.

AT&T’s chairman agrees with Catena and Verizon on this point. As Mr. Armstrong put it in referring to those who wanted access to AT&T’s own networks,

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<sup>31</sup> The Commission previously “decline[d] to unbundle packet switching,” in part, because of “our concern that we not stifle burgeoning competition in the advanced service market.” *UNE Remand Order* ¶ 316. Nothing has happened to change that cause for concern.

<sup>32</sup> Catena at 7.

“It’s not fair. It’s not right. Worse, it would inhibit industry growth and competition. No company will invest billions of dollars to become a facilities-based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.”<sup>33</sup>

It’s a pity that AT&T’s regulatory advocates do not listen to their chairman’s message.

Nor would this unbundling be necessary to “promote the rapid introduction of competition.” Competition already exists for broadband services — competition does not need to be “introduced” at all — and ILECs like Verizon are far from dominant in that market. In fact, there will be more competition if the Commission does not establish disincentives for ILECs to invest and deploy, disincentives like the new UNE the commentators seek.<sup>34</sup>

Finally, there is no way that the requested “unbundling of [this] network element promotes reduced regulation.”

Any need that the CLEC have for broadband loop transport can be met by the wholesale service offering that Verizon and others have proposed. AT&T and the Covad commentators recognize these proposals, but they claim that this “is not an adequate substitute”<sup>35</sup> and is “insufficient.”<sup>36</sup> The claimed “inadequacies” of the service approach are unpersuasive. First,

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<sup>33</sup> C. Michael Armstrong, *Telecom and Cable TV: Shared Prospects for the Communications Future*, speech delivered to Washington Metropolitan Cable Club, Washington, D.C. (Nov. 2, 1998), <http://www.att.com/speeches/item/0,1363,948,00.html>.

<sup>34</sup> See Declaration of Robert W. Crandell, dated May 26, 1999, attached to Comments of Bell Atlantic, CC Docket No. 96-98.

<sup>35</sup> AT&T at 21. AT&T is correct that “the availability of a service is not an alternative to access to a UNE” (AT&T at 22), but AT&T still must make a case that UNE treatment is appropriate under the standards of the Act, a case that it cannot make. In the absence of such a showing, the Commission should not do anything to discourage the offering of a wholesale service for this marketplace.

<sup>36</sup> Covad et al. at 21.

AT&T faults the service approach because it is “not subject to all of the nondiscrimination mandates of section 251(c)(3).”<sup>37</sup> In fact, such a service is subject to “all of the nondiscrimination mandates” of the Act and state law. Second, AT&T seems concerned that the ILECs would suddenly “withdraw the service” and leave AT&T high and dry.<sup>38</sup> Such a service, however, would presumably be provided either pursuant to interconnection agreements or other contractual arrangements, which could provide AT&T with protection against the early withdrawal it claims to fear. AT&T’s true reason is last on its list — that a service would not be priced according to TELRIC.<sup>39</sup> This, of course, is true, but the desire to pay a lower price is not sufficient support for a request for a new network element.<sup>40</sup>

### 3. The Commission May Not Permit the “Collocation” of Line Cards.

The Commission should reject the continued requests that CLECs be allowed to insert their line cards into ILEC remote terminals. As Verizon and others showed, line cards are not “equipment” that qualifies for collocation,<sup>41</sup> the line cards in question provide switching and enhanced service functions which are not eligible for collocation,<sup>42</sup> allowing the installation of line cards would require network changes that ILECs cannot be required to make,<sup>43</sup> and the line

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<sup>37</sup> AT&T at 21. Mpower similarly claims that “CLECs do not have the protections of sections 251 and 252 of the Act.” Mpower Attachment B at 3.

<sup>38</sup> AT&T at 22.

<sup>39</sup> AT&T at 22. This appears to be Covad et al.’s concern as well. Covad et al. at 21.

<sup>40</sup> *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

<sup>41</sup> 47 U.S.C. § 251(c)(6); 47 C.F.R. § 51.323(b); *Project Pronto Order* ¶ 14.

<sup>42</sup> *GTE Services Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000).

<sup>43</sup> *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997).



cards in question would not be used to “link two networks for the mutual exchange of traffic”<sup>44</sup> or to provide access to any UNE.<sup>45</sup>

In addition, there are numerous technical issues involved in such “collocation.” AT&T agrees with this assessment: “Indeed, except possibly for line cards from the manufacturer of the ILEC’s DLC equipment, such collocation may present additional technical issues, because it is unclear whether the ILECs’ networks can accommodate a wide variety of line cards at the present time.”<sup>46</sup> And Sprint seeks only virtual collocation of line cards.<sup>47</sup>

The Covad commentators continue to insist on line card “collocation.” But they recognize that it requires “full interoperability by manufacturers of DLCs and cards,” what Covad et al. refer to as “the ‘plug and play’ process.”<sup>48</sup> Full interoperability, however, will not permit manufacturers to develop special features or capabilities or to differentiate themselves from their competitors. While “full interoperability” might well be required, adopting a policy that would hamper technical advancements and lead only to plain vanilla equipment cannot be squared with the Act or the Commission’s rules.

Covad et al. suggest that states have successfully required line card “collocation.”<sup>49</sup> This is not correct. Massachusetts has not required it at all — it merely asked that Verizon prepare a

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<sup>44</sup> 47 C.F.R. § 51.5.

<sup>45</sup> Access to the subloop UNE is obtained at the accessible terminal, not in the remote. 47 C.F.R. § 51.319(a)(2).

<sup>46</sup> AT&T at 18.

<sup>47</sup> Sprint at 3, 12-13.

<sup>48</sup> Covad et al. at 26.

<sup>49</sup> Covad et al. at 24-25.

tariff that would illustrate the terms of such an arrangement.<sup>50</sup> Whatever Illinois might have ordered, it would be hard to call it a success, as SBC has announced that the commission's decision has caused it to suspend deployment of NGDLCs designed to support broadband services.<sup>51</sup>

The Commission should want ILECs to upgrade their networks to put broadband capabilities in their remote terminals. It would be creating a further deterrent to that network evolution if doing so caused ILECs to incur the additional cost and complexity of also allowing other carriers to put their own cards in their remote terminals.

#### 4. Fiber Sharing Is Not Shared Transport.

There is no support for the notion that the joint use of the fiber feeder between the central office and the remote terminal falls within the Commission's definition of shared transport.<sup>52</sup> AT&T states that "the ILECs fiber feeder in the NGDLC architecture cannot be shared transport."<sup>53</sup> Similarly, Mpower notes that "a definition of shared access for fiber feeder would require the remote terminal to be treated as an end office" "ignores reality" and would be "cumbersome."<sup>54</sup> The Commission should reject this approach.

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<sup>50</sup> See *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000*, D.T.E. 98-57-Phase III-A (MA DTE Jan. 8, 2001), [http://www.state.ma.us/dpu/telecom/98-57phaseiii/recon\\_order.htm](http://www.state.ma.us/dpu/telecom/98-57phaseiii/recon_order.htm) ("To be clear, the Department's requested tariff filing is a proposal").

<sup>51</sup> SBC at 4.

<sup>52</sup> *Sixth Further Notice* ¶ 62.

<sup>53</sup> AT&T at 11.

<sup>54</sup> Mpower at 8.

5. The Commission May Not Require New UNE Combinations.

The Commission asks whether it should require an arrangement like UNE-platform for competitors to use to provide line-shared data services.<sup>55</sup> Verizon and others demonstrated that it may not and should not. IP Communications correctly notes that it is inaccurate to describe such an arrangement as a “UNE-data platform” because “the combined UNEs in and of themselves are not sufficient to provide an end user’s service.”<sup>56</sup> That being the case, of course, the Commission may not order that such arrangements be provided.

Section 251 of the Act requires only that a carrier provide access to existing network elements — there is no requirement that an ILEC must build new network capabilities for the purpose of unbundling that network for its competitors.<sup>57</sup> Similarly, the Act does not require that an ILEC build and unbundle a network that is superior to its existing network. As the Eighth Circuit held in 1997, “subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC’s *existing* network – not to a yet unbuilt superior one.”<sup>58</sup> And that court reaffirmed this conclusion again last year — “We again conclude the superior quality rules violate the plain language of the Act.”<sup>59</sup> The Commission may not order ILECs to provide as a “UNE platform” capabilities that are greater than the sum of the component UNEs.

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<sup>55</sup> *Sixth Further Notice* ¶ 64.

<sup>56</sup> IP at 14 n.12.

<sup>57</sup> *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997).

<sup>58</sup> *Id.* at 813.

<sup>59</sup> *Iowa Utilities Board v. FCC*, 219 F.3d 744, 758 (8th Cir. 2000).

### **Conclusion**

The Commission should put an end to this proceeding without requiring ILECs to engage in further unbundling of their broadband networks. Rather, the Commission should encourage ILECs to develop wholesale broadband services by creating the regulatory environment that promotes the deployment of the new technologies. It should do this by removing entirely from its rules any requirement to provide packet switching on an unbundled basis. Furthermore, the other steps suggested in the Notice cannot be required under the Act and are bad public policy in any event because they would inhibit the deployment of new technologies and innovation in new services by carriers.

Respectfully submitted,

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Dated: March 13, 2001

## THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.